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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,825	11/08/2001	Jerome C. Bertrand	CW-06562	6104

7590 07/01/2004

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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/036,825

Applicant(s)

BERTRAND ET AL.

Examiner

Cephia D. Toomer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-28 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-28 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 16, 2004 has been entered.
2. This Office action is in response to the amendment filed April 7, 2004 in which claims 1, 12-16, 18-28 and 34 were amended.
3. The rejection of the claims under 35 USC 112, first paragraph is withdrawn in view of Applicant's arguments.
4. The rejection of the claims as anticipated by Pungs '814 in view of Egan is withdrawn in view of the amendment to the claims.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-19 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pungs (US 1,950,814).

Pungs teaches a candle composition comprising saturated free fatty alcohols that are prepared from montan or vegetable waxes. The alcohols have 14 or more carbon atoms and a melting point above 45 °C. The alcohol is present in the candle composition in an amount from 1.5 to 20% (see lines 1-54). The candle base material may be paraffin wax, stearine, stearic acid or synthetic fatty acids and mixtures thereof (see lines 55-68). Pungs teaches that the candles have non-smoky flames (see lines 84-88). Pungs teaches the limitations of the claims other than the differences that are discussed below.

Pungs fails to teach the claimed Iodine value; however, it would have been obvious to one of ordinary skill in the art to have prepared a composition possessing the claimed Iodine value because Pungs teaches a composition comprising no unsaturated compounds, i.e., a mixture of saturated alcohols, paraffin wax and stearic acid. Given that there is no unsaturated compounds present in Pungs, it would be reasonable to expect that the composition would meet the Iodine value limitations set forth in the claims, absent evidence to the contrary.

7. Claims 1, 3-10, 12-16, 23-28 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pungs (US 1,950,813).

Pungs '813 teaches candle compositions comprising combustible fatty substances such as beeswax, paraffin wax and stearic acid and the composition contains 25-50 percent saturated aliphatic alcohols derived from vegetable waxes. Such alcohols include octadecyl alcohol (C<sub>18</sub>) (see lines 1-15, 38-42 and 51-57). Pungs '813 teaches that the candle may consist entirely of the alcohols (see lines 48-51).

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Example 2 contains 25-part alcohol, 60 parts paraffin wax and 15 parts stearine.

Example 3 contains a composition comprising 30 parts fatty alcohol and 70 parts wax.

The composition melts at a temperature of 90 °C. While Example 3 does not contain a wick, it would have been obvious to one of ordinary skill in the art to include a wick in the candle composition, because Pungs '813 teaches that the alcohols are readily absorbed by the wicks (see lines 66-70).

Pungs '813 fails to teach the claimed Iodine value; however, it would have been obvious to one of ordinary skill in the art to have prepared a composition possessing the claimed Iodine value because Pungs teaches a composition comprising no unsaturated compounds, i.e., a mixture of saturated alcohols, paraffin wax and stearic acid. Given that there is no unsaturated compounds present in Pungs, it would be reasonable to expect that the composition would meet the Iodine value limitations set forth in the claims, absent evidence to the contrary.

8. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pungs '813 as applied to the claims above, and further in view of Egan (US 1,935,946).

Pungs '813 has been discussed above. Pungs '813 fails to teach hydrogenated free fatty acids. However, Egan teaches this difference.

Egan teaches a candle composition wherein natural oils are hydrogenated to an IV of 5 or less and he separates the free fatty acids from the oil (see lines 1-15, 33-54).

It would have been obvious to one of ordinary skill in the art to have substituted hydrogenated stearic acid for the stearic acid of Pungs '813 because Egan teaches that hydrogenated stearic acid allows the candle maker to use less of the expensive refined

paraffin wax (see lines 28-41) and because he teaches that the acids are art recognized equivalents.

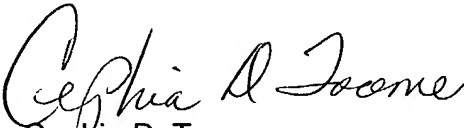
9. Applicant's declaration has been considered but is not deemed sufficient to overcome the present prior art rejections. Applicant's arguments are not supported by data, but are mere statements of what Applicant believes to be true.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
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